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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

MICHAEL DAVID PIERCE,

1:10-cv-00526-OWW-SMS (HC)

Petitioner,

FINDINGS AND RECOMMENDATION
REGARDING PETITION FOR WRIT OF
HABEAS CORPUS

v.

[Doc. 1]

DIRECTOR OF CORRECTIONS AND
REHABILITATION,

Respondent.

Petitioner is a state prisoner proceeding pro se with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254.

BACKGROUND¹

Petitioner is in the custody of the California Department of Corrections and Rehabilitation (CDCR), following convictions in the Stanislaus County Superior Court in 2006 for robbery. He is serving a term of six years.

In the instant petition, Petitioner challenges a prison disciplinary action for which he was found guilty of violating California Code of Regulations, title 15, section 3004(a), manipulation of staff, a serious rules violation.

Petitioner exhausted his administrative appeal remedies and his appeal was denied at both the Second and Director’s level.

¹ This information is derived from the state court documents attached to Respondent’s answer, which are not subject to dispute.

1 Petitioner filed a state habeas corpus petition in the Kings County Superior Court in
2 which he alleged the prison officials disciplined him for seeking mental health treatment. He
3 also claimed that he told staff that he had suicidal thoughts, and as a result, prison officials
4 charged him with a rules violation. He also claimed that the Senior Hearing Officer (SHO)
5 denied him the opportunity to present witnesses and documents at the disciplinary hearing. The
6 superior court denied the petition in a reasoned decision finding some evidence to support the
7 decision.

8 Petitioner then filed a petition in the California Court of Appeal raising the same
9 challenges as he did in the superior court petition. The petition was summarily denied.

10 Petitioner filed a petition in the California Supreme Court and raised the additional claim
11 that he was improperly denied an investigative employee to aid in his defense. The court
12 summarily denied the petition.

13 Petitioner filed the instant petition for writ of habeas corpus on March 3, 2010.
14 Respondent filed an answer to the petition on June 4, 2010, and Petitioner filed an opposition on
15 July 2, 2010.

16 DISCUSSION

17 A. Jurisdiction

18 Relief by way of a petition for writ of habeas corpus extends to a person in custody
19 pursuant to a judgment of a state court if the custody is in violation of the Constitution or laws or
20 treaties of the United States. 28 U.S.C. § 2254(a); 28 U.S.C. § 2241(c)(3); Williams v. Taylor,
21 529 U.S. 362, 375 (2000). Petitioner asserts that he suffered violations of his rights as guaranteed
22 by the U.S. Constitution. Petitioner's claims for relief arise out of a disciplinary hearing at
23 Corcoran Substance Abuse and Treatment Facility, California, which is located within the
24 jurisdiction of this Court. 28 U.S.C. §§ 2254(a), 2241(d). If a constitutional violation has resulted
25 in the loss of time credits, such violation affects the duration of a sentence, and the violation may
26 be remedied by way of a petition for writ of habeas corpus. Young v. Kenny, 907 F.2d 874, 876-
27 78 (9th Cir. 1990).

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2 B. Standard of Review

3 This Court may entertain a petition for writ of habeas corpus “in behalf of a person in
4 custody pursuant to the judgment of a State court only on the ground that he is in custody in
5 violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2254(a).

6 The AEDPA altered the standard of review that a federal habeas court must apply with
7 respect to a state prisoner’s claim that was adjudicated on the merits in state court. Williams v.
8 Taylor, 529 U.S. 362 (2000). Under the AEDPA, an application for writ of habeas corpus will
9 not be granted unless the adjudication of the claim “resulted in a decision that was contrary to, or
10 involved an unreasonable application of, clearly established Federal law, as determined by the
11 Supreme Court of the United States;” or “resulted in a decision that was based on an
12 unreasonable determination of the facts in light of the evidence presented in the State Court
13 proceeding.” 28 U.S.C. § 2254(d); Lockyer v. Andrade, 123 S.Ct. 1166 (2003), *disapproving the*
14 *Ninth Circuit’s approach in* Van Tran v. Lindsey, 212 F.3d 1143 (9th Cir. 2000); Williams, 529
15 U.S. 362. “A federal habeas court may not issue the writ simply because that court concludes in
16 its independent judgment that the relevant state court decision applied clearly established federal
17 law erroneously or incorrectly.” Lockyer, 123 S.Ct. at 1175 (citations omitted). “Rather, that
18 application must be objectively unreasonable.” Id. (citations omitted).

19 The state court’s factual determinations must be presumed correct, and the federal court
20 must accept all factual findings made by the state court unless the petitioner can rebut “the
21 presumption of correctness by clear and convincing evidence.” 28 U.S.C. § 2254(e)(1); Purkett v.
22 Elem, 514 U.S. 765 (1995); Thompson v. Keohane, 516 U.S. 99 (1995); Langford v. Day, 110
23 F.3d 1380, 1388 (9th Cir. 1997).

24 In the last reasoned state court decision, the Kings County Superior Court denied the
25 petition stating, in pertinent part:

26 In this case, it appears that the finding of guilt was based solely upon the
27 reporting employee’s report, to wit: “. . . during chow release, Medical Staff
28 informed Correctional Officer Saucedo that inmate PIERCE was again claiming
that he was suicidal, due to the fact he was being moved to the GYM.” Petitioner
was not medically recognized as being suicidal at the time of his alleged

1 misconduct, and in fact contends that he was not. Despite this fact, Petitioner
2 admits in his appeal that he told staff that he had a plan to kill himself. That such
3 statement was made in direct response and close in time to notification of an
4 intended cell move, supports the finding of guilt reached in connection with Rules
5 Violation Report, Log No. E-08-05-040. Further, it appears that Petitioner was
6 granted the right to present witnesses in the form of stipulated testimony of his
7 benefit. Neither the medical documents sought to be admitted by Petitioner, nor
8 his intended statements of threats upon his person, would in the opinion of this
9 tribunal have sufficiently undermined the existence of “some evidence” within the
10 record to support judicial intervention.

11 Findings that the decision reached in connection with Rules Violation
12 Report, Log No. E-08-05-040 is supported by “some evidence” in the record, IT
13 IS HEREBY ORDERED, the petition is denied.

14 (Exhibit 2, to Answer.)

15 Prisoners cannot be entirely deprived of their constitutional rights, but their rights may be
16 diminished by the needs and objectives of the institutional environment. Wolff v. McDonnell,
17 418 U.S. 539, 555 (1974). Prison disciplinary proceedings are not part of a criminal prosecution,
18 so a prisoner is not afforded the full panoply of rights in such proceedings. Id. at 556. Thus, a
19 prisoner’s due process rights are moderated by the “legitimate institutional needs” of a prison.
20 Bostic v. Carlson, 884 F.2d 1267, 1269 (9th Cir. 1989), *citing* Superintendent, etc. v. Hill, 472
21 U.S. 445, 454-455 (1984).

22 However, when a prison disciplinary proceeding may result in the loss of good time
23 credits, due process requires that the prisoner receive: (1) advance written notice of at least 24
24 hours of the disciplinary charges; (2) an opportunity, when consistent with institutional safety
25 and correctional goals, to call witnesses and present documentary evidence in his defense; and
26 (3) a written statement by the factfinder of the evidence relied on and the reasons for the
27 disciplinary action. Hill, 472 U.S. at 454; Wolff, 418 U.S. at 563-567. In addition, due process
28 requires that the decision be supported by “some evidence.” Hill, 472 U.S. at 455, *citing* United
States ex rel. Vatauer v. Commissioner of Immigration, 273 U.S. 103, 106 (1927).

29 C. Insufficient Evidence to Support Rules Violation for Manipulation of Staff

30 Petitioner contends that his rules violation for manipulation of staff in violation of Title
31 15, California Code of Regulations, section 3004(a), was not supported by some evidence.

32 The superior court found there was some evidence to support the finding that Petitioner

1 was guilty of manipulating staff. On May 24, 2008, Correctional Officer Saucedo was in the
2 process of distributing indigent envelopes when Petitioner was notified that he was being moved
3 to gym housing. Officer Saucedo was later informed by medical staff that Petitioner claimed that
4 he was suicidal because he was going to be moved to gym housing.

5 A rules violation hearing was conducted on June 15, 2008, before Senior Hearing Officer
6 (SHO) Childs. Petitioner was initially advised of his rights and stated he understood his rights,
7 was in good health and ready to proceed with the hearing. Petitioner denied the charges and
8 stated “I was on suicide watch for (5) [f]ive days which had nothing to do with housing
9 placement.” Although it was noted that Petitioner was a participant in the mental health services,
10 he did not display any bizarre, unusual, or uncharacteristic behavior. Petitioner was found guilty
11 of the rules violation and assessed, among other things, a thirty day loss of credit. The SHO
12 based his finding of guilt on the prison disciplinary report which provides some evidence to
13 support the finding of guilt. As noted by the superior court, Petitioner was not medically
14 recognized as being suicidal at the time of the misconduct, and in fact Petitioner concedes that he
15 was not. However, in his administrative appeal, Petitioner admitted that he told staff he had a
16 plan to kill himself. The superior court reasonably found that Petitioner’s “statement was made
17 in direct response and close in time to notification of an intended cell move, [and] supports the
18 finding of guilt reached in connection with the Rules Violation Report. . . .” Petitioner’s claim
19 that he was indeed suicidal does not establish that the superior court’s decision was an
20 unreasonable application of the some-evidence standard. Rather, it demonstrates that Petitioner
21 simply disagrees with the weight the state courts assigned to the evidence of which this Court
22 cannot re-assess or re-weigh. Accordingly, Petitioner’s claim is without merit.

23 D. Denial of Right to Call Witness

24 Petitioner contends that he was denied the opportunity to call witnesses at the rules
25 violation hearing. Petitioner was not denied the right to call witnesses at his hearing; rather, the
26 record is clear that Petitioner requested to call Social Worker Maravilla and Correctional Nurse
27 Brown as witnesses. The SHO granted Petitioner’s requested and the two stipulated to the
28 witnesses testimony. Social Worker Maravilla would state Petitioner said he was feeling

1 suicidal, and Correctional Nurse Brown would state Petitioner said he was suicidal because he
2 felt worthless. Thus, there is no merit to Petitioner’s claim that he was denied witnesses.

3
4 E. Denial of Right to Investigative Employee

5 Petitioner contends that he was denied the right to an investigative employee which could
6 have assisted him in acquiring additional information regarding his mental status. At the hearing,
7 SHO Childs found that Petitioner did not meet the criteria for assignment of an investigative
8 employee pursuant to California Code of Regulations section 3315(d)(2)² because he had a
9 T.A.B.E. (testing for adult education level) score above 4.0 and was literate and English
10 speaking. The charges were read to Petitioner and he acknowledged that he understood the
11 charges and plead “not guilty.” Petitioner overlooks the fact that the hearing officer admitted and
12 considered the evidence that Petitioner felt suicidal. There is no showing that the hearing officer
13 prevented Petitioner from presenting further evidence or that such evidence would have affected
14 the guilty finding. As stated by the superior court, [n]either the medical documents sought to be
15 admitted by Petitioner, nor his intended statements of threats upon his person, would in the
16 opinion of this tribunal have sufficiently undermined the existence of ‘some evidence’ within the
17 record to support judicial intervention.” Based on the foregoing, the superior court’s
18 determination was not contrary to or an unreasonable application of clearly established federal

19 _____
20 ² Title 15 of the California Code of Regulations section 3315(d)(1)(A) states:

21 (d) An inmate shall be assigned an employee to assist in the investigation of matters
22 pertaining to a disciplinary action when the chief disciplinary officer or designee determines the
23 necessity based on the following criteria.

24 (1) Investigative Employee.

25 (A) An investigative employee, as described in section 3318(a), shall be assigned
26 when the staff designated to classify the serious rules violation determines that:

- 27 1. The complexity of the issues require further investigation.
28 2. The housing status makes it unlikely the charged inmate can collect and present
the evidence necessary for an adequate presentation of a defense.
3. A determination has been made that additional information is necessary for a
fair hearing.

1 law, nor an unreasonable determination of the facts in light of the evidence.

2 F. Denial of Mental Health Evaluation

3 Petitioner contends that he should have been afforded a mental health evaluation prior to
4 issuance of the RVR. There is no right to a mental health evaluation prior to issuance of a
5 violation or commencement of a hearing. If there was evidence of self-mutilation or attempted
6 suicide, an assessment may have been necessary. (Cal. Code Regs., tit. 15, § 3317). However, in
7 this instance, there was no evidence of self-mutilation or attempted suicide, and at the beginning
8 of the hearing Petitioner acknowledged that he was in good health and ready to proceed with the
9 hearing. Therefore, it was determined that a mental health evaluation was not necessary. This
10 finding is further supported by the fact that Petitioner was seen at the mental health department
11 just eleven days prior to the hearing, and it was determined there was no suicidal ideation or
12 psychotic symptoms. Accordingly, this claim is without merit.

13 G. Denial of Right to Impartial Hearing Officer

14 Petitioner contends that he was denied the right to an impartial hearing officer because
15 the SHO knew that he was pursuing charges against his friends. He claims SHO Childs told him
16 that he would not give any evidence against friends and made sure he was denied all
17 entitlements.

18 A fundamental requirement of due process is an impartial decision-maker or tribunal.
19 Wolff, 418 U.S. at 592. If the prison disciplinary hearing officers are “not left at large with
20 unlimited discretion” the hearing is impartial. Id. at 571. In this case, Petitioner points to no
21 evidence, beyond his conclusory allegations, that SHO Childs was not impartial. Indeed, the
22 record establishes that Childs considered all evidence presented by Petitioner, and there is no
23 showing that he had personal knowledge of the facts or was in any way personally interested in
24 the outcome. Accordingly, there is simply no merit to Petitioner’s claim and it should be denied.

25
26 RECOMMENDATION

27 Based on the foregoing, it is HEREBY RECOMMENDED that:

- 28 1. The instant petition for writ of habeas corpus be DENIED; and

1 2. The Clerk of Court be directed to enter judgment in favor of Respondent.

2 This Findings and Recommendation is submitted to the assigned United States District
3 Court Judge, pursuant to the provisions of 28 U.S.C. section 636 (b)(1)(B) and Rule 304 of the
4 Local Rules of Practice for the United States District Court, Eastern District of California.

5 Within thirty (30) days after being served with a copy, any party may file written objections with
6 the court and serve a copy on all parties. Such a document should be captioned “Objections to
7 Magistrate Judge’s Findings and Recommendation.” Replies to the objections shall be served
8 and filed within fourteen (14) days after service of the objections. The Court will then review the
9 Magistrate Judge’s ruling pursuant to 28 U.S.C. § 636 (b)(1)(C). The parties are advised that
10 failure to file objections within the specified time may waive the right to appeal the District
11 Court’s order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

12
13 IT IS SO ORDERED.

14 **Dated:** July 20, 2010

/s/ Sandra M. Snyder
UNITED STATES MAGISTRATE JUDGE